

Message Text

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FM USMISSION USBERLIN

TO SECSTATE WASHDC PRIORITY 2385

AMEMBASSY BONN

UNCLAS USBERLIN 0866

E.O. 11652: N/A

TAGS: ABLD, PGOV, WB,

SUBJECT: DELEGATION OF AUTHORITY FOR SALE PORTION TIERGARTEN

PROPERTY BERLIN, PROPERTY NO. 06241-B

REF: A) STATE 097194; B) BONN 6382

1. SUMMARY: LOWER COURT JUDGE WHO HAS BEEN HANDLING SALE OF TIERGARTEN PROPERTY WILL NOT BUDGE. RATHER THAN EXPERIENCE TIME DELAY THAT WOULD BE INVOLVED IN APPEAL OF HIS DECISION OR POLITICAL AWKWARDNESS THAT WOULD ALMOST INEVITABLY RESULT IN OUR DIRECTLY VOIDING JUDGE'S DECISION UNDER ALLIED RESERVED OCCUPATION RIGHTS, WE BELIEVE BEST SOLUTION WOULD BE FOR DEPARTMENT TO PREPARE POWER OF ATTORNEY FROM SECRETARY TO AMBASSADOR TO MEET JUDGE'S REQUIREMENT. MAY 8 DEADLINE CAN BE EXTENDED. WE WOULD TAKE SUITABLE ACTION WHEN DELIVERING AUTHORIZATION TO ENSURE THAT WE ARE NOT BOUND BY THIS PRECEDENT IN FUTURE BERLIN REAL ESTATE TRANSACTIONS. END SUMMARY:

2. WE HAVE HAD SEVERAL DISCUSSIONS WITH JUDGE, WHO REMAINS ADAMANT THAT HE WILL NOT AUTHORIZE ENTRY OF TRANSACTION IN GRUNDBUCH UNLESS WE PRESENT AUTHORIZATION FROM SECRETARY OF STATE TO AMBASSADOR TO SELL THIS PROPERTY. JUDGE POINTS TO KAMMERGERICHT (BERLIN SUPREME COURT) DECISION THAT RULED DUTCH AMBASSADOR WAS UNABLE TO SELL DUTCH GOVERNMENT PROPERTY IN BERLIN WITHOUT SPECIAL AUTHORIZATION FROM FOREIGN UNCLASSIFIED

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MINSITER BECAUE COURT DID NOT CONSIDER THAT AMBASSADOR'S

NORMAL POWERS UNDER INTERNATIONAL LAW INCLUDED RIGHT TO SELL GOVERNMENTAL PROPERTY. JUDGE CONSIDERS HIMSELF BOUND BY HIGHER COURT RULING AND BELIEVES PRESENT CASE PRESENTS SAME FACTS. HE REVIEWED AT OUR REQUEST COURT FILES FOR ECKSTEIN PROPERTY AND SAYS SIMPLY "THE JUDGE MADE A MISTAKE." WE HAVE POINTED OUT TO HIM THAT, REGARDLESS OF KAMMERGERICHT PRECEDENT WITH RESPECT TO LIMITATIONS ON AN AMBASSADOR'S AUTHORITY TO ENGAGE IN REAL ESTATE TRANSACTIONS, U.S. AMBASSADOR CANNOT BE COMPARED WITH NORMAL AMBASSADOR SINCE, AS INHERITOR OF HIGH COMMISSIONER'S AUTHORITY, HE IS ACTUALLY HIGHEST GOVERNMENTAL OFFICIAL IN U.S. SECTOR OF BERLIN AND, WITH HIS BRITISH AND FRENCH COLLEAGUES, REPOSITORY OF SUPREME GOVERNMENTAL AUTHORITY IN WESTERN SECTORS. WE HAVE SHOWN HIM EXECUTIVE ORDERS ASSIGNING TO AMBASSADOR ALL USG CIVIL GOVERNMENTAL RESPONSIBILITY FOR BERLIN. WE HAVE ALSO SUGGESTED THAT, BECAUSE WHAT IS AT ISSUE IS DETERMINATION OF SCOPE OF AUTHORITY OF ALLIED OFFICIAL AND INTERPRETATION OF ALLIED ORDER (EXECUTIVE ORDER 10608) JUDGE SHOULD PROPERLY UNDER ALLIED KOMMANDATURA LAW NO. 7 REFER MATTER TO US FOR RESOLUTION. ALL THIS HAS LEFT HIM UNMOVED. HIS DECISION WAS FILED IN JANUARY. WE HAVE UNTIL MAY 8 TO COMPLY WITH IT, APPEAL IT OR TAKE OTHER ACTION. JUDGE HAS, HOWEVER, PROMISED TO EXTEND MAY 8 DEADLINE IF THAT WILL HELP US FULFILL HIS REQUIREMENTS.

3. WE COULD SIMPLY VOID HIS DECISION UNDER ALLIED KOMMANDATURA LAW NO. 7, PROVIDE OUR BINDING LEGAL INTERPRETATION, AND ORDER JUDGE TO MAKE APPROPRIATE ENTRY INTO GRUNDBUCH. THIS WOULD BE EXTREME MEASURE THAT, REGARDLESS OF PROVOCATION OR JUSTIFICATION, WOULD INEVITABLY GO DOWN BADLY NOT ONLY WITH THIS JUDGE BUT WITH ENTIRE BERLIN LEGAL COMMUNITY AND COULD BECOME SOMETHING OF A POLITICAL ISSUE BECAUSE OF ITS IMPLICATION OF ALLIED INTERFERENCE WITH FREE BERLIN JUDICIARY.

4. APPEAL TO HIGHER COURT WOULD SEEM TO HAVE LITTLE UNCLASSIFIED

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TO RECOMMEND IT WE MIGHT FIND THAT THAT COURT ALSO WOULD FEEL ITSELF BOUND TO APPLY KAMMERGERICHT RULING. WE WOULD ALSO NOT WISH TO BE PLACED IN POSITION OF HAVING TO PLEADE BEFORE A COURT THAT AMBASSADOR'S AUTHORITY DOES OR DOES NOT INCLUDE POWER TO ENGAGE IN CERTAIN ACTS. THIS IS REALLY MATTER THAT SHOULD NOT BE JUSTIFIABLE IN BERLIN. DIRECT INSTRUCTION TO COURT, HOWEVER, WOULD HAVE SAME DISADVANTAGES OUTLINED

PARA 3 ABOVE.

5. WE ARE RELUCTANTLY LED TO RECOMMEND, THEREFORE, THAT DEPARTMENT OBTAIN AUTHORIZATION FROM SECRETARY FOR AMBASSADOR TO SELL TIERGARTEN PROPERTY. IF DEPARTMENT AGREES TO THIS COURSE, WE WILL REQUEST JUDGE TO LET HIS MAY 8 DEADLINE LAPSE.

6. WE DO NOT WISH TO LEAVE JUDGE'S INTERPRETATION OF AMBASSADORIAL AUTHORITY UNCONTESTED ON RECORD, HOWEVER, BOTH TO AVOID SIMILAR PROBLEM SHOULD WE WISH TO SELL ADDITIONAL PROPERTY IN BERLIN AND AS POINT OF PRINCIPLE CONCERNING RESERVED ALLIED RIGHTS. WE WOULD INTEND, THEREFORE, TO SEND FAIRLY STIFF LETTER TO JUDGE AT SAME TIME AS WE SUBMIT SECRETARY'S AUTHORIZATION. WE WOULD EXPLAIN THAT AUTHORIZATION WAS BEING SUBMITTED AS A COURTESY, BUT THAT WE DID NOT ACCEPT LEGAL REQUIREMENT. WE WOULD PROVIDE A FORMAL INTERPRETATION THAT IN OUR JUDGMENT AMBASSADOR'S AUTHORITY TO CARRY OUT USG RESPONSIBILITIES IN BERLIN AS SET FORTH INTER ALIA IN EXECUTIVE ORDER 10608 INCLUDES THE CAPACITY TO ENGAGE IN REAL ESTATE TRANSACTIONS ON BEHALF OF USG, THAT THIS IS A MATTER OF INTERPRETATION OF AN ALLIED ORDER WHICH, UNDER ALLIED KOMMANDATURA LAW NO7, CAN BE RESOLVED DEFINITELY ONLY SECTOR COMMANDANT CONCERNED, AND THAT IN ALL FUTURE CASES OF THIS SORT WE WOULD EXPECT THE BERLIN JUDICIARY TO PROCEED IN THIS FASHION. WE WOULD ENSURE THAT SENATOR FOR JUSTICE RECEIVES COPY OF THIS LETTER. WE BELIEVE THAT HE WILL UNDERSTAND REASON FOR OUR TAKING THIS POSITION AND WILL APPRECIATE OUR RESTRAINT IN NOT OVERTURNING DIRECTLY DECISION OF BERLIN COURT. WITH THIS LETTER ON RECORD, UNCLASSIFIED

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WE WOULD NOT EXPECT A JUDGE TO RAISE SIMILAR PROBLEM NEXT TIME WE WISH TO SELL (OR PURCHASE) PROPERTY IN BERLIN. IF HE DOES, HOWEVER, WE WOULD THINK THAT GROUNDWORK WOULD HAVE BEEN LAID FOR US TO ISSUE SUFFICIENT ORDERS WITHOUT AGAIN REQUIRING SPECIAL AUTHORIZATION FROM SECRETARY. GEORGE

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